

Florence, New Jersey 08518-2323
October 25, 2011

The regular meeting of the Florence Township Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Fratinardo called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Secretary Montgomery then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Brett Buddenbaum	Candida Taylor
Keith Crowell	B. Michael Zekas
John Fratinardo	Robert Adams
John Groze	William Bott
Ray Montgomery	

ABSENT: None

ALSO PRESENT: Solicitor David Frank
Engineer Dan Guzzi
Planner Bob Perry

Chairman Fratinardo called for Application ZB#2011-15 for EffiSolar Energy Corporation. Applicant is requesting Final Major Site Plan approval for Phase 2 for solar generation facility on property located at 1019 Cedar Lane.

He stated that a letter had been received from the applicant's attorney requesting that the application be continued until the November 22, 2011 meeting and stating that they would be providing additional public notice to adjoining property owners.

Motion of Taylor, seconded by Crowell to continue Application ZB#2011-15 until the November 22, 2011 meeting of the Board. Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Crowell, Fratinardo, Groze, Montgomery, Taylor, Zekas
NOES: None
ABSENT: None

Chairman Fratinardo called for Application ZB#2011-09 for Silvia Secelean and Ioan Secelean. Applicant is requesting a Use Variance to permit conversion of a detached garage into a one bedroom apartment on property located at 1019 Potts Mill Road, Florence Township. Block 166, Lot 12.01.

James Burns, Esq. from the firm of Dembo & Saldutti, LLP stated that he was representing the applicant, Silvia Secelean. He stated that also in attendance this evening is the applicant's planner Barbara Wooley Dillon.

Attorney Burns stated that the applicant was here to request use variance approval to convert an existing detached garage into a one bedroom apartment at the property located at 1019 Potts Mill Road also know as Block 166, Lot 12.01.

Silvia Secelean, 110 Fourth Avenue, Apt. 20, Roebling, NJ was sworn in by Solicitor Frank. She stated that she is a co-owner with her brother of the property located at 1019 Potts Mill Road. Ms. Secelean stated the home was very small with 2 small bedrooms and 1 small bathroom. She is not able to live at the property due to the fact that the second bedroom is so small that it can only be used as a computer/storage room. Attorney Burns submitted Exhibits A1 through A5 a series of photographs showing the small bedroom in the existing dwelling.

Ms. Secelean said that she does not live at the home due to the small size of the second bedroom. She stated that her brother and his wife live at the home and occupy the master bedroom that is also very small. There is only room for a queen size bed, a dresser and a TV. A photograph showing the size of the master bedroom was submitted as Exhibit A6.

Ms. Secelean stated that due to the limited living space she has been forced to rent an apartment in Roebling approximately 1 ½ miles from the subject property. Ms. Secelean stated that she was recently diagnosed with kidney cancer and has finished treatment. Due to her health issues she would like to live on the property with her brother and sister-in-law as they are the only relatives that she has in the United States.

Responding to questions from Attorney Burns, Ms. Secelean stated that the garage is currently used only for storage. She stated that a few years ago she had looked into putting an addition on the house, but was told by an architect that due to the structure of the house it would be very difficult and very costly to build an addition. Also the addition would reach past the existing garage.

Ms. Secelean stated that her property is 2.18 acres. The existing home is set back very far off the street and the garage is behind the home. Attorney Burns submitted Exhibits A7, A8 & A9. Ms. Secelean said that these photos show angled shots of the property showing the garage. Exhibit A10 is a front view of the house. The garage cannot be seen at all from this angle. Ms. Secelean stated that her property is very well screened with trees and wooded areas. The land behind the property is vacant preserved land. Ms. Secelean stated that she couldn't see the homes on either side of her property as they are buffered by fences and large evergreen trees. Exhibits 11 through 17 show the property and the buffering along the side. Ms. Secelean agreed that these photos are an accurate reflection of the heavy vegetation at the rear of the home, where there is nobody living as well as the extensive buffer that exists on both sides of the home where there are neighbors. She said that she could not see into her neighbors' yards and they could not see into her yard.

Ms. Secelean agreed that the existing garage resembles an apartment and that the architect has added some aesthetic changes, but the look won't be changed too much. She stated that there is plenty of parking available on the property.

Attorney Burns submitted Exhibit A18 and A19 showing the driveway and parking area. Ms. Secelean stated that there would be 3 cars parked on the property on a daily basis. She stated that in her opinion this garage conversion would have no impact at all to the neighbors and would not be visible to the neighbors. The intention is to keep the property private. She stated that given the existing structures, the landscaping and screening and the size of the property (2.18 acres) the proposed use is well suited for the property.

Member Crowell asked if there would be a bathroom in the converted garage and if so would it be connected to the septic system. Ms. Secelean stated that there would be a bathroom. The property currently is on septic but they have paid the connection fees for the public sewer and will connect both the house and the apartment as part of the conversion project. She stated that they would be abandoning the septic system. She stated that the property was connected to the public water system approximately 2 years ago. When they bought the house it was well water, but when public water was made available in the area they decided to connect to it.

Responding to a question from Member Taylor, Ms. Secelean stated that she and her brother co-own the property in a 50/50 split. She said that it is neither her intention of her brothers intention to rent this apartment.

Responding to a question from Vice Chairman Zekas, Ms. Secelean said that she and her brother have owned the home since 2007 and that she has never lived on the property. Her brother and his wife live in the house and she has been renting an apartment the entire time. Vice Chairman Zekas asked Ms. Secelean to elaborate on the need to be close to family. Ms. Secelean stated that her brother is her only relative in the United States. She said that she was diagnosed with kidney cancer and still needs her brother to help her if something happens. During her recovery, her brother was there to help her but it was often difficult for he or his wife to get there due to their work schedules. It would have been much easier if she were there on the property.

Vice Chairman Zekas asked if when the architect looked at putting an addition on the home had he considered adding a second story? Ms. Secelean answered that the architect did not mention a second story, but told her that if she were to build something in the back it would reach the garage anyway and set that there was not enough room between the house and the garage. She said that she then asked about having an addition on the side of the house and the architect told her that the house was too close to the property line and it would not be allowed. She said at that point she gave up the idea of an addition.

The Board expressed concern that if they granted this approval then if Ms. Secelean should move out then the apartment would be rented or the property would be sold as 2 units. Attorney Burns stated that the purpose of this application is not to create a rental unit but to provide a place to for Ms. Secelean to live. Ms. Secelean stated that it is her intention to live there as long as they own the property. Attorney Burns asked about the possibility of an addition. Ms. Secelean stated that she had been advised that an addition would be very costly, while the conversion of the garage would not be as expensive.

Member Crowell asked if a condition could be put on the property that if the property were sold the apartment could never be rented? Solicitor Frank stated that approvals granted by the Zoning Board run with the land, they are not personal to this owner. The particular personal circumstances of this owner aren't really what drive the Board's authority to grant or not grant variances. The Board needs to look at the property itself, the nature of the property, the nature of the development on the property. These are the issues that the Board should consider and then once a decision is made, any subsequent owners can avail themselves of whatever relief is granted. This is always the difficult situation that the Board is faced with when addressing the issues of personal hardship, which are obviously evident in this case.

Member Taylor asked if the garage and the main house could be connected by a corridor with all the utilities remaining in the main house. The garage area could have a living area, bedroom and bathroom, but the kitchen and washer dryer would be shared and remain in the main house. Ms. Secelean stated that she had not considered this. She stated that she works in the medical field and works night shift. She states that she cooks during the night and she sleeps during the day. She said that her brother and sister-in-law work during the day and sleep during the night and it would be too disruptive to have her cooking while they were trying to sleep.

Barbara Woolley Dillon was sworn in and was accepted as an expert in the field of professional planning.

Ms. Woolley-Dillon stated that there has been testimony regarding the applicant's very unique set of circumstances, however there also has to be a public benefit in granting the requested variance relief. She quoted that the applicant had offered a good explanation of the surrounding area and stated that she had an aerial photograph of the area. The photograph was marked as Exhibit A20.

Ms. Woolley-Dillon stated that the purpose of the R Low Density Residential Zoning District is to provide for a moderate growth area for single-family residential dwellings and accessory uses incidental thereto with provision for clustering and the use of bonus density. The applicant has stated that she is here for a Use variance. The issue isn't that the use isn't residential, but that the proposal is to add a second dwelling unit to the site, which would also be a second principal use. She stated that there is also an existing non-conforming condition with regards to lot width and this would certainly fall under the hardship criteria for that. The required lot width is 125' but the lot is less than that.

Engineer Guzzi stated that the lot width is 100' at Potts Mill Road but narrows down to approximately 60' at the back of the site.

Ms. Woolley-Dillon stated that there are 3 things that have to be demonstrated to the Board. The first is that there are special reasons or positive criteria that they satisfy. This is not an inherently beneficial use. Secondly they have to demonstrate that the Use Variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance and third that the site is particularly suited to the proposed use.

Ms. Woolley-Dillon stated that the special reasons were found in NJSA 40:55D-2. There are 15 specifically enumerated and then 2 additional reasons that aren't listed as "a through o" but are considered as reasons. The 2 not specifically enumerated are aesthetics and preservation of neighborhood character. She stated that for the purpose of this application she believes that they satisfy 6 of those special reasons plus the 2 (preservation of neighborhood character and aesthetics). She stated that she would list them by letter and then briefly touch on them.

Ms. Woolley-Dillon stated that she believes that this application satisfies special reasons a, c, e, g, i and m. Special reason (a) is the promotion of the public health, safety, morals and general welfare. Housing in New Jersey is very expensive. In this application there are 2 families who are trying to be together as one unit. This proposal would provide them with an affordable housing option. She stated that she believes that this satisfies special reason (a). Special reason (c) is to promote adequate light, air and open space. Again this application meets all of the bulk and area requirements with the exception of the lot width. The application does not exceed the maximum permitted density. This proposal is similar to what is in the surrounding area. There is also the mature buffer area and the existing evergreens. This provides screening for the surrounding properties. No impervious coverage would be added to the site since the proposal utilizes the existing garage. The impervious coverage is approximately 2% where 20% maximum is permitted. Special reason (e) is the promotion of the establishment of appropriate population densities. The ordinance permits one dwelling unit per acre. In this case there is one dwelling unit per 2.18 acres, which equates to 0.917 certainly well below what the ordinance permits. Special reason (g) is to provide sufficient space and appropriate locations for a variety of uses. Testimony has been given about the unique situation with regard to the applicant and in this case Ms. Woolley-Dillon stated that she thinks it overlaps those special reasons or public benefit for granting the requested variance. Special reason (i) is promoting a desirable visual environment through creative development techniques. Improvements are being proposed to the garage, it will be kept private and low key. Special reason (m) is to encourage the coordination of various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land. She stated that testimony was given that it was less cost effective to add an addition either up or out onto the existing house. The proposal will be in keeping with the character of the neighborhood. There is no real visual impact or disturbance to the neighborhood. Finally the apartment will be improved aesthetically.

Ms. Woolley-Dillon stated that the next burden of proof addresses the Master Plan and the Master Plan Re-examination Reports. The 2 most recent Re-examination Reports indicated that this portion of the township is the area that is slated for future growth. Ms. Woolley-Dillon submitted Exhibit A21, which is a copy of the existing map and aerial photograph from the 2007 Florence Township Master Plan Re-examination Report. She located the subject property on the aerial photograph for the Board, showing that this property is in the area that the township anticipates future growth. This satisfies the goal that the future residential development should be limited to this portion of the township and that the existing character of residential areas and neighborhoods should be protected and preserved.

Ms. Woolley-Dillon stated that the third burden of proof asks if the site is particularly suited for the proposed use. She stated that testimony has been given as to what exists on the site. The dwelling is very small as is the garage and the use is residential. She believes that for these reasons, small existing structures and residential uses are permitted makes this particularly suited for the site.

Ms. Woolley-Dillon stated that the final thing she has to address is what is the potential negative impact if any. This doesn't mean that there can't be any negative impact, but if there is some kind of potential negative impact, what has been done to mitigate that. In this case there are 2 potential negative impacts. First is that there will be an increase in traffic generated by the site. The Residential Site Improvement Standards (RSIS) indicate that for a residential dwelling unit on the peak day of the week (Saturday) there would be an estimated 10.09 vehicle trips associated with the site. The site does have proximity right on the road and she stated that in her opinion the road could handle those potential 10 vehicle trips. The second is that there are going to be 2 dwelling units on the site. This site has nearly 5 times the minimum required lot size. The density is approximately ¼ of what is permitted. The applicants are working as best they can with the existing site improvements to blend what is there with what is going on across the street and accommodating this future growth. She stated that for these reasons she believes that they have met the burden of proof.

Ms. Woolley-Dillon said that there is one more case (*Sica v. Board of Adjustment of Jamesburg*) that is referred to when the Board is evaluating Use Variances. The public interest at stake must be identified. She stated that testimony has been given regarding the needs from the applicant's perspective. Testimony was also provided as to the needs of the community at large. Secondly, any potential detrimental effects that might result from the grant of the variance must be identified. She stated that she did this in identifying the potential negative criteria. Thirdly, you must ask if the detrimental effects if any could be reduced or mitigated by imposing reasonable conditions on the applicant. She stated that testimony has been given on the amount of extensive screening. The proposed apartment will be barely visible. There is going to be no visual impact or intrusion upon surrounding properties. Finally the Board has to weigh the positive and negative criteria, the 6 special reasons plus the aesthetics and the preservation of neighborhood character and determine whether on the balance did the applicant meet the

burden of proof and if on the whole does it warrant granting the requested Use Variance relief.

Ms. Woolley-Dillon stated in summary that she believes that the applicant has met the burden of proof and that based on the reasons stated, the Board should feel comfortable granting the requested Use Variance.

Member Taylor stated that she had never questions the aesthetics of the proposal. Her concern is that this will be a completely separate dwelling space and if the property is sold there is the potential that the apartment could be used as a rental by a new owner. She stated that her question was if there was a way to connect the 2 buildings so they become one.

Attorney Burns stated that the applicant did hear the Board's concerns. He stated that Ms. Secelean intends to stay at the property as long as she can. This is her home. However, if the applicant were to agree to a condition that should she leave the property the kitchen would be removed from the apartment, which would eliminate the efficiency apartment and mitigate the negative affect on the property.

Ms. Woolley-Dillon said that given the economic climate and health care crisis today you are finding multiple generations of families residing together and the single family patterns aren't set up for that. The land use patterns that have been established don't necessarily reflect the reality of what has happened in the world today. Ms. Secelean and her brother and sister-in-law are trying to function together as a family unit.

Ms. Woolley-Dillon stated that planning is a snapshot in time. However, we can't always envision and see every land use or change in the economic or social demographics. These changing demographics weigh heavily into this consideration.

Planner Perry stated that the Board has a very difficult decision before them. Some of the Board Members have shown concern.

Planner Perry stated that Ms. Woolley-Dillon has provided her opinion on 6 special reasons and the Board only has to agree that one is satisfactory in order to grant the variance. The Board has to balance this out. It is always difficult when there is a conversion of a detached structure. The approval runs with the land.

Vice Chairman Zekas said that another potential situation could be that the current residents in the main home move out while Ms. Secelean remains in the apartment. Then the front unit has the potential of being a rental.

Member Taylor again asked if the 2 units could be connected? She said that if it were connected it would be less likely to be a rental unit.

Attorney Burns stated that there is case law that addresses the second kitchen issue and whether or not that creates a separate unit. One of the cases is *Cherney V. Zoning Board*

of Adjustment 221 NJ Super. In this 1987 Appellate Division case the court held that the installation of a kitchen in a basement in order to accommodate the owners parents didn't violate the zoning ordinance precluding 2 family housing. Member Taylor stated that was the basement of a house, not a separate structure.

Solicitor Frank asked why isn't there an addition to the existing dwelling proposed? Attorney Burns stated that Ms. Secelean had testified that an addition would be very difficult to do structurally given the existing structure of the home. Solicitor Frank stated that this was hearsay. Ms. Secelean is being truthful as to what she believes but this is hardly expert testimony with regard to the structural nature of the dwelling and the potentiality of its construction, which would help the Board to understand why this couldn't be done. Attorney Burns stated that he understands this but in fairness to Ms. Secelean; after she investigated her options this is what she came up with as a more cost effective option that will allow her to live on her property, not have to rent any more and be close to family. This is a very unique situation and if the Board looks at this for what it is and considers the testimony of Ms. Woolley-Dillon and considers the condition that the kitchen would be removed should Ms. Secelean sell the property to alleviate any concerns that it would be rented as an efficiency apartment in the future. Ms. Secelean's intention is to stay there as long as she can, but if she can't for whatever reason, that kitchen gets removed and this should alleviate the Board's concerns.

Solicitor Frank said that if the Board says to this applicant as a condition of granting you approval that when you leave you have to take that kitchen out, how is that not making the variance personal and how does that live up to the general background law that variances run with the land. Attorney Burns stated that this specifically addresses a concern of the Board. Solicitor Frank stated that he understands that this addresses a concern of the Board, but the Board can't think that it is creating a position that is actually beyond its power to do. Attorney Burns stated that if this Board approves this application it does so specifically based on the proofs presented granting a Use Variance to allow this use. They have granted a variance that will now run with the land. The applicant is offering to pull that complete approval back to a lesser approval to meet the Board's concerns that the apartment may be rented in the future. This is lessening the impact that the variance that runs with the land has on the property.

Ms. Woolley-Dillon referenced a form of COAH housing that is called ECHO cottages which is an affordable senior housing that goes away when the person no longer lives there. Solicitor Frank stated that this is not affordable. There is no obligation for it to be affordable. It isn't senior housing. This is truly a second unit. This Board has to deal with the ordinance as it is and with the judicial standards and statutory standards as they are for the granting of variances from those ordinances.

Ms. Woolley-Dillon said that she understands that the comparable nature of the two is that when the person that it was specifically constructed for went away, the unit also had to go away. This is something that the court has upheld.

Member Crowell stated that this variance runs with the land. Attorney Burns agreed and said that if the Board approves it, it approves it based on very specific circumstances that run with the property. If the Board accepted the condition offered by the Applicant of the removal of the kitchen, it would have to be done. Member Crowell asked if the Applicant would be legally required to do that. Attorney Burns stated that this could be deed restricted so that when Ms. Secelean vacates the property the kitchen has to be removed and this is a blanket statement to anybody that purchases this house would know ahead of time. Vice Chairman Zekas stated that this doesn't cover the situation if the applicant's brother moves out and then they try to rent the existing house.

Solicitor Frank quoted from the New Jersey Zoning & Land Use Administration (Cox Book) saying that the general rule is that the variance runs with the land, but there are certain cases where variances can be limited to a certain class of person, for example variances granted for construction of accessory apartments or cottages for occupancy by an aging parent or other independent relative. Such variances would be of limited duration since they lapse on cessation of the approved occupancy. He stated maybe the Board could condition the approval on having a close family relationship demonstrably between the people in the 2 dwellings.

Attorney Burns answered that based on what Solicitor Frank pointed out it could be family related by blood, or parent, etc. The condition would be that it would have to be a family member. Engineer Guzzi suggested that the resident of the apartment would have to also be co-owner of the property. Solicitor Frank asked how the utilities would be set up? Ms. Secelean indicated that there could be a single bill for all utilities.

Solicitor Frank stated that if the Board should rule in favor of the application then the applicant should have a deed notice that records all the conditions.

Motion of Montgomery, seconded by Taylor to open the application to public comment. Seeing no one wishing to offer comment, motion was made by Crowell, seconded by Buddenbaum to close the public comment.

Motion of Montgomery, seconded by Crowell to improve the application with conditions that there be co-ownership and a close familiar relation between occupants of both dwelling, shared utilities with one electric meter, one water and sewer meter for both dwellings.

Upon roll call the Board voted as follows:

YEAS:	Zekas, Taylor, Montgomery, Groze, Fratinardo, Crowell, Buddenbaum
NOES:	None
ABSENT:	None

The Board took a 5 minute break. The Board returned to the regular order of business.

Chairman Fratinardo called for Application ZB#2011-16 for Waggin' Tails of Florence, LLC. Applicant is requesting an Interpretation from the Board that the proposed use of property as a "pet store" is expressly allowed as a permitted use in the HC Highway Commercial Zone or a Use Variance in the alternative for property located at 2037 Route 130 South, Florence Township. Block 159, Lot 4.02.

Paul Schultz, attorney for the applicant stated that Waggin' Tails is a pet shop that offers dog grooming services, the sale of pet supplies and the overnight boarding of dogs for their owners on a temporary basis. No pets are being sold as part of the business. The applicant is renting the property at 2037 Route 130 South in Florence Township and she seeks to use it for the above mentioned purposes. The applicant does not propose any new construction, soil disturbances or any other changes to the site with the exception of some minor internal modifications to the building, which are shown on the plans that were submitted with the application.

Attorney Schultz stated that they were here tonight with an application in the alternative. First he is requesting an Interpretation from the Board that the applicants proposed use of the property would be considered a "pet shop" under the Florence ordinance and thus would be a permitted use in the zone. In the event that the Board does not agree that the use fits with the "pet shop" use as defined in the ordinance a Use Variance is then requested.

Attorney Schultz stated that the applicant wants to use the property as a pet shop. She intends to offer dog grooming services, the sale of certain pet supplies and to board dogs over night for the owners if the owners go out of town. He said that his understanding is that when the applicant went for the permits for this use she was told that the grooming application and the sale of the supplies were not really a problem, they fit within the permitted uses, but the boarding aspect does not fit within the definition of a pet shop.

Attorney Schultz stated that a pet shop is a permitted use within the HC Highway Commercial zone. He referenced Section 91-216.K which designates all NC Neighborhood Commercial uses as permitted within the HC zone. Section 91-227.B for the NC permitted uses lists various retail activities (one of which is a pet shop). The Florence Township Code does not provide any definition as to what a pet shop is so he stated that the Board should use what the everyday definition of a pet shop is. Attorney Schultz stated that a pet shop is commonly understood to be an establishment where pets and or pet supplies can be purchased or sold, where pet related services such as grooming or boarding are offered.

Attorney Schultz stated that the applicant is proposing to sell pets but submitted the fact that just because the applicant is not offering the full range of services does not make it any less of a pet shop. He stated that he was going to have the applicant briefly confirm the purposes on which she is going to use the property to allow the Board to hear that that is consistent with what he had represented because essentially the question since there is no definition in the code is really what the Board considers to be the intent of the ordinance and whether the applicant's use fits into a pet shop.

Sharon Pericoloso, 132 Fairbrook Drive, was sworn in the Solicitor Frank. Ms. Pericoloso stated that she is proposing a pet store, strictly for dogs. She will sell supplies such as bowls, leashes, collars, dog food and treats. She will also offer dog grooming and hopefully offer the boarding.

Attorney Schultz asked if the Board had any questions with regard to the information that they might need for the interpretation aspect of this application. Member Taylor asked if this were not a pet shop, what would it be called instead? Would it be retail or a kennel? Solicitor Frank said that this is why the ordinance interpretation question is there. Section 91-227 under permitted principal uses in the NC zone allows local retail activities including grocery stores, meat markets, seafood markets, delicatessens, bakeries, drug stores, furniture stores, sporting goods shops...pet shops, etc. and the question is; is a place where animals are kept overnight consistent with those retail uses in a neighborhood commercial zone. Kennels since they are separately licensed are different.

Attorney Schultz said that the boarding of dogs overnight is going to be one aspect of the business, but not the primary aspect of the business. The primary aspect is going to be the selling of supplies and the grooming of dogs.

Ms. Pericoloso stated that the boarding would have a maximum of 12 dogs per night. She stated that the animals would be inside. There is a fenced in yard for periodic dog walking. Any time an animal was boarded there would be someone on site monitoring 24 hours per day. Attorney Schultz stated that in a pet shop that sold animals you would have more than 12 animals on site and they would be there overnight.

Secretary Montgomery said that according to the Board's planner overnight boarding is not part of a pet shop. Planner Perry stated that in reading the ordinance pet stores are allowed and in the context of where it was allowed it is his opinion that the intent was not to have kennels. He stated that a lot of towns have a separate section for kennels, as they are different from pet shops.

Attorney Schultz stated that as opposed to a kennel operation which would be focused on keeping the animals overnight, this would be more akin to a pet shop with a whole range of services.

Chairman Fratinardo stated that the Board has doubts about this use being permitted in the zone and would like to move forward to the Use Variance application.

Attorney Schultz stated that he would have Ms. Pericoloso testify about the business and how it meets both the positive and negative criteria and how the property will be particularly suited to the Use proposed. Secretary Montgomery asked about the issue of completeness.

Engineer Guzzi stated that regarding the Use Variance the checklist item that has not been provided is a current survey. He stated that the reason a current survey is important

is because there were certain improvements required as part of a previous application for this property and the Board should see exactly what is out there. He stated that a minor site plan would be required but the applicant could ask for a waiver of that requirement since no site work is being proposed.

Attorney Schultz requested a waiver on both the survey and the site plan on the basis that the prior plans would have been submitted and conditions met prior to the inspection and certificate of occupancy issued. Engineer Guzzi stated that he doesn't know that the work was ever completed on the previous approval. The Board needs to know if the landscaping and parking area was installed. Attorney Schultz stated that the owner was in attendance and could speak regarding the prior approval.

Attorney Schultz stated that Ms. Pericoloso is renting the property. She is not the owner and she is literally proposing no changes to the property other than 1 or 2 slight internal modifications. He said that they are trying to avoid the costs of a survey or site plan when no real changes are being done.

Engineer Guzzi stated that the applicant is asking for a waiver of everything but the Board has no idea what the site looks like because nothing has been provided.

The Board indicated that they did not feel comfortable voting on a site without having the opportunity to review at minimum a survey.

Solicitor Frank stated that the Board could deal with the Use issue and whether it fits into that zone. Attorney Schultz said that the last resolution for the site was PB-2007-37 for the minor site plan. Engineer Guzzi stated that he did not believe that all the improvements that were required by that resolution had been completed and this is why he requested the updated survey. Attorney Schultz stated that the owner of the property was in attendance and could testify for the record what has been completed on the site.

Frank Natoli, owner of the site, was sworn in by Solicitor Frank. Mr. Natoli said that he had applied for site plan approval to change the use from car repair shop to a fence retail location and to construct a 1,000 sq. ft. building behind the existing building. He has a copy of the resolution listing the conditions that were imposed as part of the approval.

Mr. Natoli testified that everything has been done except for the construction of the shed in the back. The purpose of buying this property was to relocate his business from Hamilton to Florence Township. He bought this building in 2007 with the idea of downsizing from manufacturing doors and fence to just manufacturing and selling fence to contractors but he needed a display area and came in to get the variance for the display area, even though the fenced in area was already fenced in with chain link to store cars. He stated that he got a variance to permit outdoor display. He removed the existing chain link fence with the barbed wire, removed old concrete on both sides of the building and left grass area and installed a vinyl fence in the same footprint of the previous fence. There were 2 other chain link fenced in areas around the building. These were removed and not replaced.

Member Bott asked if he was required to install trees. Mr. Natoli stated that he installed trees along the side of the property bordering the old 84 Lumber site. Mr. Natoli stated that more landscaping would have been required if he had built the proposed building in the back. He stated that due to the drop off in the housing market he never completed the move from Hamilton to Florence.

Member Crowell asked for the height of the vinyl fence. Mr. Natoli stated that it was 4' high on 2 sides and 6' along the back. Member Crowell asked if this was the fenced in area to contain the animals. Mr. Natoli stated that they made custom made fences and it might actually be 52" high.

Member Crowell asked if all the improvements had been done except the building in the back. Mr. Natoli answered that yes he had done everything except the building in the back and the landscaping associated with the building. Mr. Natoli stated that he had revised the parking area per the approval, installed concrete in front of the display area, and relocated the handicap parking spot. A walking path was installed from the parking area to the fenced in display area on the right of the building.

Secretary Montgomery asked Engineer Guzzi to read the conditions and have Mr. Natoli respond to them. Solicitor Frank stated that there were a lot of plan details that wouldn't have been necessarily listed in the resolution. Member Taylor asked if anyone had a picture of the site.

Mr. Natoli stated that he had a dozen copies of the site plan. This was submitted as Exhibit A1. Attorney Schultz submitted 3 photographs showing the subject property and identified as Exhibits A2, A3 and A4.

Member Crowell asked if a 4' fence was tall enough to prevent the animals from jumping over it. Ms. Pericoloso stated that there would be someone outside with the animals at all times but she was planning on adding a 6' mesh fence in front of the 4' fence.

Engineer Guzzi read from the definition section of the animals code in the Township Code Book: "we define kennels as any establishment wherein or whereon the business of boarding or selling dogs or breeding dogs for sale is carried on except a pet shop". Further down in the code the definition of pet store is listed as: "any room or group of rooms, cage or exhibition pen, not part of a kennel, wherein dogs or cats for sale are kept or displayed".

Solicitor Frank stated that this is saying that boarding is not permitted as part of a pet store. So this is definitely a Use variance application.

Attorney Schultz stated that what is being proposed doesn't neatly fit into either of the definitions but is somewhere between the 2. He stated that they are prepared to address the Use issues.

Solicitor Frank stated that he believes that the applicant has agreed to submit a current survey as a condition of approval. Engineer Guzzi stated that the owner has indicated that all the improvements are in except the improvements to the large building that was never constructed. If the Board is satisfied, based on the site plan that was just submitted, that those improvements are adequate, it could be handled with an inspection.

Motion of Montgomery, seconded by Crowell to deem the application complete with the condition that an inspection be conducted by the Township Engineer to verify that the improvements had been installed.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Crowell, Fratinardo, Groze, Montgomery, Taylor, Zekas
NOES: None
ABSENT: None

Ms. Pericoloso stated that she is renting the property as Waggin' Tails of Florence, LLC. She stated that she had looked at retail spaces in the Shoppes at Mallard Creek, the new Harkins Lane Plaza and the new shops at Homestead in Columbus and none of these locations were appropriate because of the neighboring shops. Then she found this location that stands alone and thought it was perfect.

Responding to Attorney Schultz, Ms. Pericoloso stated that she would not be offering any services other than the ones already specified. She stated that she did not propose to use the house at the back of the property. The shop will be open 7 days a week. Monday through Saturday 9:00 a.m. to 8:00 p.m. and Sunday 10:00 a.m. to 6: p.m. If dogs are being boarded their will be an attendant at all times but the store will only be open for business on the hours listed. The animals will be in the fenced area when out side and will only be outside periodically during the day.

Ms. Pericoloso stated that there currently are 2 signs for the prior business on site, one free standing and one on the building. She stated that she will utilize the existing signs but will change the face of the sign to list the name of her business. No additional advertisements will be on the signs. She stated that including herself there would be 4 employees over 2 shifts. There would be a maximum 3 employees on site at one time.

Ms. Pericoloso stated that the maximum number of dogs boarding at one time would be 12. The dogs would be secured in individual crates in the back of the building and there would be an attendant there at all times. She stated that there are 7 parking spaces including the handicap space. There is also a large grass area that could be used for overflow parking if necessary. She stated that she could only groom 2 dogs at a time. These would be dropped off and then the owners would leave. There would be maybe 3 customers in the store at one time. She stated that in her opinion the existing parking is adequate for her business.

Member Taylor asked if there would be a height and weight restriction on the dogs. Ms. Pericoloso stated that she would not want to turn anyone away however her crates were only 4' high so she couldn't take a dog overnight that wouldn't fit in the crate.

Solicitor Frank asked how much of the floor area was dedicated to retail? Mr. Natoli answered that it was just under 1,000 sq. ft.

Ms. Pericoloso confirmed that other than the internal modifications there would be no structural changes to the building. No new addition to the building is planned, no additional structures are proposed. There will be no soil disturbance or new construction. No new fences other than the mesh extensions. There should be no noise (other than an occasional dog bark), odors, hazardous waste or other disturbance to neighbors.

Ms. Pericoloso stated that she did a census report of all the dogs in the surrounding 5 towns and also investigated the pet places in the 5 towns and they provide one service or another. It is very rare to find all 3 services in one location.

Attorney Schultz stated that the provision of all 3 services in one place would benefit both dog owners within the community of Florence as well as in surrounding communities. Ms. Pericoloso stated that this site is particularly suited to this use due to its large size and the fact that the neighboring properties are commercial.

Secretary Montgomery asked if a state license was required to operate a facility like this? Ms. Pericoloso stated that only a grooming license is required. Secretary Montgomery asked if state inspections of the site would be required. Ms. Pericoloso answered that no state inspections are required.

Member Groze stated that a state license is required for a kennel, but this is not really a kennel. Attorney Schultz stated that Ms. Pericoloso would acquire any licenses necessary to operate this business.

Member Bott asked Ms. Pericoloso how long she had been a groomer. She answered that she had taken the class (approximately 150 hours) so she had been a groomer roughly 3 months. She went to a certified teacher in Barnegat, NJ for the grooming class.

Motion of Montgomery, seconded by Taylor to open the hearing to public comment. Motion unanimously approved by all members present. Seeing no one wishing to testify, motion was made by Crowell and seconded by Groze to close the public hearing. Motion unanimously approved by all members present.

Attorney Schultz stated that the applicant has to satisfy both the positive and negative criteria with regard to the application and to show that the property is particularly suited to this use. In terms of the negative criteria, he said that the applicant's testimony was clear that the site will be used in its existing condition. There will not be any detriment to the neighboring property owners in terms of noise (other than an occasional dog bark), there won't be any hazardous waste, bright lights, disturbances, etc.). In terms of the

positive criteria the applicant testified that this site is particularly suited for this use that would be difficult to operate in other places. The applicant looked at other properties for this use but those properties were too small or located too close to residential property owners. She doesn't want to disturb neighbors with barking dogs. This site is along Route 130 and there is sufficient space between this site and the other properties. Plus the other properties are commercial in nature.

Attorney Schultz stated that this is a unique situation. While the request for Interpretation wasn't granted a look to that can show that the ordinance does allow in that zone a pet store to sell pets. Obviously a store selling pets would probably store well in excess of 20 or 30 pets at the location on an overnight basis. The Board could find that allowing this hybrid that doesn't fit neatly into either of the definitions in this zone is appropriate considering that the pet sales in essence from a mechanical standpoint would have to satisfy the same concerns with the overnight boarding of animals that you have with this boarding operation. For those reason that applicant has satisfied both the positive and negative criteria and showed the particular suitability of the site.

Motion of Zekas, seconded by Montgomery to grant the application for the pet grooming, boarding and supply shop as proposed.

Solicitor Frank stated that conditions include a site inspection by the Township Engineer to confirm that the improvements approved as part of the prior approval have, in fact, been installed to the extent that it was represented on the record by Mr. Natoli, compliance with the site improvements and conditions required under the prior site plan approval except for the structure that wasn't built and associated landscaping, store hours of operation Monday through Saturday of 9:00 a.m. to 8:00 p.m. and Sunday 10:00 a.m. to 6:00 p.m., animals will be kept indoors over night and when outside they will be in the fenced enclosed area and attended, the number of employees on site at any given time are 3 plus the owner, no other site improvements and any outside agencies or licensing requirements as required.

Upon roll call the Board voted as follows:

YEAS:	Zekas, Taylor, Montgomery, Groze, Fratinardo, Crowell, Buddenbaum
NOES:	None
ABSENT:	None

Secretary Montgomery read the time limit for appeal statement to the applicant.

MINUTES

Motion of Taylor, seconded by Buddenbaum to approve the Minutes of the regular meeting of September 27, 2011 as submitted. Motion unanimously approved by all members present.

RESOLUTION

Resolution ZB-2011-27
Granting bulk variances for impervious surface coverage and alley setback to
Michael Zekas to permit installation of an in-ground swimming pool on property
located at 313 Spring Street, Florence. Block 43, Lot 16.

Motion of Taylor, seconded by Adams to approve Resolution ZB-2011-27.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Groze, Fratinardo, Taylor, Buddenbaum, Adams
NOES: None
ABSENT: None

CORRESPONDENCE

A. 2012 Meeting Schedules of Boards/Commission

Motion was made and seconded to receive and file Correspondence A. Motion unanimously approved by all members present.

PUBLIC COMMENT

The meeting was opened to public comment. As there was no public in attendance motion was made by Buddenbaum, seconded by Zekas to close the public comment. Motion unanimously approved by all members present.

There being no further business motion was made by Montgomery, seconded by Zekas to adjourn the meeting at 10:06 p.m.

Ray Montgomery, Secretary

RM/ne